UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21400

In the Matter of

MICHAEL SZTROM and
DAVID SZTROM,

Respondents.

MOTION BY DIVISION OF ENFORCEMENT FOR SUMMARY DISPOSITION AGAINST RESPONDENTS MICHAEL SZTROM AND DAVID SZTROM PURSUANT TO COMMISSION RULE OF PRACTICE 250

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I. INTRODUCTION

The Division of Enforcement ("Division") moves pursuant to Rule 250 of the Securities and Exchange Commission's ("SEC" or "Commission") Rules of Practice for summary disposition in this follow-on proceeding against Michael Sztrom and David Sztrom (collectively "Respondents").

There is no genuine issue of material fact that would preclude summary disposition. Respondents have been enjoined from violating the antifraud provisions of the federal securities laws, and it is in the public interest to bar them because their fraud was egregious, recurrent, and involved a high level of scienter, and because, despite remaining in the securities industry, neither Respondent has acknowledged the wrongfulness of their conduct nor provided any reasonable assurance against future violations. The Division therefore requests an order barring Respondents from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization.

This motion is supported by the Statement of Undisputed Material Facts in Support of Division of Enforcement's Motion for Summary Disposition ("SMF"), and the Declaration of Lynn M. Dean ("Dean Decl.").

II. PROCEDURAL BACKGROUND

On January 15, 2021, the Commission filed a Complaint in the case captioned *SEC v. Michael Sztrom, et al.*, Civil Action Number 3:21-cv-00086-H-RBB (S.D. Cal.). SMF No. 1; Dean Decl. Ex. 1. On June 10, 2021, Defendants in *SEC v. Sztrom* filed an answer in which they admitted being investment advisers, but denied all allegations of wrongdoing. SMF No. 155; Dean Decl. Ex. 2.

On September 16, 2022, Michael Sztrom consented to the entry of a final judgment in the district court action, permanently enjoining him from future violations of the antifraud provisions of Section 206 of the Investment Advisers Act of 1940 ("Advisers Act"). SMF No. 156; Dean Decl. Ex. 3.

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On September 16, 2022, David Sztrom consented to the entry of a final judgment in the district court action, permanently enjoining him future violations of the antifraud provisions of Section 206 of the Advisers Act and from aiding and abetting future violations of Section 204 of the Advisers Act and Rule 204-2(a) thereunder. SMF No. 157; Dean Decl. Ex. 4.

The Consents to Entry of Judgment signed by both Michael and David Sztrom expressly stated "in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action." SMF No. 158; Dean Decl. Exs. 3, 4 at ¶ 9.

On October 6, 2022, the district court permanently enjoined Michael Sztrom from future violations of Section 206 of the Advisers Act and permanently enjoined David Sztrom from future violations of Section 206 of the Advisers Act and from aiding and abetting future violations of Section 204 of the Advisers Act and Rule 204-2(a) thereunder. SMF Nos. 159, 163; Dean Decl. Exs. 5, 8.

The Division of Enforcement instituted this follow-on proceeding on May 2, 2023, when the Commission issued an Order Instituting Proceedings ("OIP") against Michael and David Sztrom pursuant to Section 203(f) of the Advisers Act. SMF Nos. 161, 163; Dean Decl. Exs. 6, 8. The OIP was based on the district court injunctions against Michael and David Sztrom in *Securities and Exchange Commission v. Michael Sztrom, et al.*, Civil Action Number 3:21-cv-00086-H-RBB (S.D. Cal.). *Id.*

On May 25, 2023, Respondents served their Answer to the OIP. SMF No. 161; Dean Decl. Ex. 7. In their Answer, Respondents "do not deny" they each consented to entry of a Final Judgment in the civil action known as *SEC v. Michael Sztrom, et al.*, Case No. 3:21-cv-00086-H-RBB (S.D. Cal.) "that enjoins them from future violations of the statutes and rules described in the OIP." *Id.* In addition, they "do not deny" that "the U.S. Securities and Exchange Commission's ("SEC") Complaint in that action alleged what the SEC states that it alleged in the OIP. Except as specifically admitted, however, Respondents deny the remaining allegations in the OIP and deny that any remedial relief is warranted or appropriate." *Id.*

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On July 7, 2023, the parties filed a joint prehearing conference statement in which they stipulated to the certain facts. SMF No. 163; Dean Decl. Ex. 8.

On July 13, 2023, the Commission set a briefing schedule for motions for summary disposition. Advisers Act Rel. No. 6347.

III. FACTS

Michael Sztrom, 69, resides in San Diego, California. SMF No. 163; Dean Decl. Ex. 8, Fact No. 5. Since 1998, Michael Sztrom has been associated with various securities firms and, until late 2015, served as an investment adviser and broker-dealer for a large securities firm ("Securities Firm A"). *Id.*, Fact No. 1.

After leaving Securities Firm A in 2015, Michael Sztrom was not associated as an investment adviser representative ("IAR") with any firm and claimed to work as a certified financial planner at the same time his son, Respondent David Sztrom, was associated with Advanced Practice Advisors, LLC ("APA"), a California limited liability company and an investment adviser registered with the SEC. *Id.*, Fact No. 2.

Since April 2018, Michael Sztrom has been associated as an IAR with Integrated Advisors Network, LLC ("Integrated Advisors Network"), an investment adviser registered with the Commission. *Id.*, Fact No. 4.

David Sztrom, 32, resides in San Diego, California. *Id.*, Fact No. 9. From November 2015 until March 2018, David Sztrom was an investment adviser and associated as an IAR with APA. *Id.*, Fact No. 6. From August 2015 to the present, David Sztrom also was associated with Sztrom Wealth Management, LLC ("SWM"). *Id.*, Fact No. 7. Since April 2018, David Sztrom has been associated as an IAR with Integrated Advisors Network. *Id.*, Fact No. 8.

The Commission's complaint alleged that, from November 2015 through March 2018, Respondents breached their fiduciary duties and defrauded the clients whom they advised through APA. SMF No. 3. According to the SEC's complaint, Michael and David Sztrom were father and son investment advisers who, in violation of their fiduciary duties, deceived their advisory clients by, among other things, concealing that the Michael Sztrom was: (1) not

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associated with any registered investment adviser, (2) prohibited from providing investment advice under the aegis of the clients' registered investment adviser, and (3) was impersonating his son David Sztrom on telephone calls with the registered investment adviser's clearing broker, leading the clearing broker to terminate its agreement with the registered investment adviser. SMF Nos. 2, 8-20, 30-53, 54-70, 88-100.

In 2015, Michael Sztrom was the subject of an investigation by the Financial Industry Regulatory Authority ("FINRA"), a private nongovernmental corporation that, among other things, regulates registered brokers in the United States. SMF No. 9. When Michael Sztrom resigned from Securities Firm A in or about August 2015, he was told that FINRA had an open investigation regarding him. SMF No. 10. The investigation pertained to Michael's conduct while at Securities Firm A. *Id.* After moving most of his advisory clients from Securities Firm A to Schwab, Schwab informed Michael Sztrom that it would prohibit him from using its brokerage platform due to the ongoing FINRA investigation. SMF Nos. 11-12. Michael Sztrom then tried to associate with APA and contacted Individual 1 to make that transfer. SMF Nos. 14-16. But due to Schwab's refusal to allow Michael Sztrom access to its platform, Individual 1 decided that APA would only associate with Michael's son, David, who had only recently passed his licensing exam for investment advisors and lacked experience. SMF Nos. 17-18. Nevertheless, most of Michael Sztrom's clients moved to APA. SMF No. 18, 21-29.

Because Individual 1 told Michael Sztrom that he could not associate with APA, Michael Sztrom told Individual 1 that he would serve in the limited role of financial planner to the clients who moved to APA. SMF No. 19. That representation was a ruse and he never collected any fees for doing financial planning. SMF Nos. 71-80.

While David Sztrom was associated with APA and Michael Sztrom was not, Michael continued to communicate with the Sztrom clients via text message and his e-mail, both of which were outside the APA compliance system. SMF Nos. 30-53, 54-70, 81-87. 88-100. Some of these communications regarded investment advice and placing orders for securities transactions. SMF Nos. 30-53. Respondents did not disclose to the Sztrom clients that Michael (1) was not

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associated with APA; (2) was providing those clients investment advice without compliance oversight; and (3) was communicating with them contrary to federal securities laws and APA's requirements for IARs. SMF Nos. 4-20, 30-53, 54-70, 81-87, 118-123, 143-150.

The complaint also alleged that David Sztrom was complicit in misleading advisory clients because he assisted Michael Sztrom in accessing confidential information from the APA system, including client information, provided Michael Sztrom with access to APA's broker-dealer, including the APA master account number, and was aware that Michael Sztrom was communicating with APA clients using his personal cell phone rather than the APA email system. SMF Nos. 8-18, 30-53, 81-87, 119-123, 132-154.

From on or about November 2015 to on or about May 2016, Michael Sztrom impersonated David Sztrom and purported to be associated with APA on approximately 38 telephone calls with Schwab. SMF Nos. 88-100. On several of these calls, Michael Strom, acting as David, discussed block trading, warrants trade allocation, and rebalancing Sztrom client accounts after he had executed trades. SMF No. 90. On several of these calls, Michael Sztrom, acting as David, sometimes referenced Sztrom client account numbers, and on at least eight separate occasions – December 2, 2015, December 7, 2015, three times on December 28, 2015, December 30, 2015, February 18, 2016, and February 25, 2016 – Michael, acting as David, provided Schwab with the master account number for APA. SMF Nos. 91-92.

During some of the calls in which Michael impersonated David to Schwab, David was present. SMF No. 93.

As a result of Michael Sztrom's impersonation of David Sztrom to Schwab, on or about June 2016, Schwab terminated its relationship with APA, gave APA 90 days to find a new broker, and immediately stopped honoring David Sztrom's access to the Schwab platform. SMF Nos. 98-100.

After Schwab terminated its relationship with APA in June 2016, Respondents did not inform the Sztrom clients of the true reason for the termination, i.e., Michael Sztrom's repeated impersonation of David Sztrom to Schwab.

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Although Respondents claimed they told clients the reason for Schwab's termination, they failed to fully inform or provide any written notice to the Sztrom clients that Schwab no longer allowed David Sztrom to access the Schwab platform, including to make trades for clients, due to Michael's repeated impersonation of David on calls to Schwab. SMF Nos. 101-103.

Instead, the Sztrom clients first learned that Schwab had terminated its relationship with APA and had immediately prohibited David Sztrom from utilizing Schwab's services when Schwab sent a letter on or about June 2, 2016 to all clients at APA (i.e., the Sztrom clients and other APA clients) who were using the Schwab platform. SMF Nos. 103-106. After Schwab sent the letter to the Sztrom clients advising them of the termination, Michael Sztrom received calls from several Sztrom clients expressing concern and demanding an explanation. SMF No. 107.

At least one client emailed Michael Sztrom on or about July 20, 2016 asking "why I should switch to [another broker] since you use Schwab as well and I'm already set up over there." SMF No. 108. Michael responded to this client, via email on or about July 21, 2016, stating that the reason for changing brokers was "primarily" that the new clearing broker had "more advanced portfolio management capabilities." SMF No. 109. Michael Sztrom's email response to the client was false and did not provide the real reason for the termination, i.e., Michael's impersonation of David Sztrom on calls to Schwab. SMF No. 110.

After Schwab terminated its relationship with APA in June 2016, Respondents verbally informed the Sztrom clients that all Schwab accounts would be moving to a new broker. SMF Nos. 111. During these conversations, Michael Sztrom told several clients that he had only impersonated David Sztrom on a single call to Schwab. SMF No. 112. Respondents failed to disclose that in fact, Michael had impersonated David 38 times on calls to Schwab. SMF No. 113. By misleading clients about the real reason for leaving Schwab, Respondents breached their fiduciary duties. SMF No. 115.

The complaint further alleged that Michael Sztrom's use of his personal phone to exchange text messages with APA clients was not only in violation of APA's corporate policies and procedures but also meant that Michael Sztrom's communications with APA clients,

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including investment advice and messages about trades he was executing, were not monitored or preserved as required by the firm. As alleged by the complaint, Respondents concealed from their advisory clients that Michael Sztrom was providing investment advice to them without being associated with APA and without compliance oversight by APA or any other entity.

The complaint alleges that Respondents acted with scienter, by knowingly or recklessly deceiving clients by concealing that Michael Sztrom, who clients viewed as their IAR, was unable to act as an IAR at APA, by Michael Sztrom impersonating David Sztrom on 38 telephone calls with Schwab in order to access the Schwab platform, and providing false or misleading information to, and/or omitting material information from, clients regarding the reason Respondents recommended their clients leave the Schwab platform and move to a new brokerage firm. SMF Nos. 116-123, 153, 154.

Respondents' misstatements and omissions were material, and they confused and deceived the Sztrom clients. SMF Nos. 54-70, 124-127.

In addition, David Sztrom knowingly provided substantial assistance to APA's violation of Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2. SMF Nos. 132-152. Specifically, David, while associated with APA, knowingly communicated, and permitted Michael to communicate, via text message on his personal smartphone with the Sztrom clients regarding: (i) recommendations made or proposed to be made and advice given or proposed to be given; (ii) receipt, disbursement or delivery of funds or securities; and/or (iii) the placing or execution of any order to purchase or sell any security, and did not retain these communications. *Id*.

By engaging in the conduct alleged in the complaint, both Respondents violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b- 6(1) & 80b-6(2), and David Sztrom aided and abetted APA's violations of Section 204(a) of the Advisers Act and Rule 204-2(a)(7) thereunder.

The Consents to Entry of Judgment signed by both Michael and David Sztrom expressly state "in any disciplinary proceeding before the Commission based on the entry of the injunction

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in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action." SMF No. 10; Dean Decl. Exs. 3, 4 at ¶ 9.

IV. LEGAL ARGUMENT

A. Summary Disposition is Appropriate

Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, provides that a party may move for summary disposition of any or all allegations of the OIP, after a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying. A hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. Rule of Practice 250(b).

Summary disposition is appropriate here because permanent injunctions have been entered by the district court, and because Respondents cannot dispute the factual allegations in the SEC complaint there can be no disputed facts. The sole remaining determination concerns the appropriate sanction.[1]

B. There Is No Genuine Issue With Respect To Any Material Fact

To prevail on this motion for summary disposition, the Division must establish that: (1) Respondents have been enjoined from violating the federal securities laws, and (2) it is in the public interest to impose a bar against each of them.

1. Respondents have been permanently enjoined

On October 6, 2022, the district court permanently enjoined Michael Sztrom from future violations of the antifraud provisions of Section 206 of the Advisers Act and permanently enjoined David Sztrom from future violations of the antifraud provisions of Section 206 of the Advisers Act and from aiding and abetting future violations of Section 204 of the Advisers Act

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[1] *See, e.g. Omar Ali Rizvi*, Initial Dec. Rel. No. 479 (Jan. 7, 2013), 2013 WL 64626 ("Commission has repeatedly upheld use of summary disposition in cases where the respondent has been enjoined and the sole determination concerns the appropriate sanction."), *notice of finality*, Release No. 69019, 2013 WL 772514 (Mar. 1, 2013).

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and Rule 204-2(a) thereunder. SMF No. 159; Dean Decl. Ex. 5. These injunctions provide the statutory basis for this administrative proceeding.[2]

An antifraud injunction is considered to be particularly serious. *See Marshall E. Melton*, 56 S.E.C. 695, 710, 713 (2003). The public interest requires a severe sanction when a respondent's past misconduct involves fraud, because opportunities for dishonesty recur constantly in the securities business. *See Richard C. Spangler, Inc.*, 46 S.E.C. 238,252 (1976).

2. The public interest factors support permanent bars

The criteria for assessing the public interest are found in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *Jason A. Halek*, Release No. 1376, 2019 WL 2071396, at *3 (May 9, 2019). The public interest factors include:

> The egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.

Id. "The existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry." *Michael V. Lipkin*, *supra*, 2006 WL 2422652 at *4.

a. Respondents' violations of the antifraud provisions were egregious, recurrent, and involved a high level of scienter

The first three *Steadman* factors are established by the allegations of the underlying complaint and Respondents' admissions. SMF Nos. 2-154, 163.

The complaint alleges that for over two years, from November 2015 through March 2018, Respondents breached their fiduciary duties as advisers and defrauded the clients whom

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[2] *See, e.g.*, *Douglas G. Frederick*, Initial Dec. Rel. No. 356 (Sept. 9, 2008), 94 S.E.C. Docket 212, 2008 WL 4146090, *notice of finality*, 94 S.E.C. Docket 977, 2008 WL 4500336 (Oct. 8, 2008).

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they advised through APA. SMF Nos. 2-3, 8-20, 30-70, 88-115, 116-123. Thus, Respondents' conduct was recurrent.

Moreover, Respondents' conduct was egregious. Respondents were acting as investment advisers. SMF Nos. 21-29, 128-131. The Supreme Court has held that Section 206 of the Advisers Act establishes a statutory fiduciary duty for investment advisers to act for the benefit of their clients, including the obligation to disclose to their clients all material facts, and to employ reasonable care to avoid misleading their clients. *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963); *Transamerica Mortgage Adviser, Inc. v. Lewis*, 444 U.S. 11, 17 (1979) ("Indeed, the Act's legislative history leaves no doubt that Congress intended to impose enforceable fiduciary obligations."). As fiduciaries, Respondents were required "to act for the benefit of their clients, … to exercise the utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients." *SEC v. DiBella*, No. 3:04-cv-1342 (EBB), 2007 WL 2904211, at *12 (D. Conn. Oct. 3, 2007) (*quoting SEC v. Moran*, 922 F. Supp. 867, 895-96 (S.D.N.Y. 1996)), aff'd, 587 F.3d 553 (2d Cir. 2009); *see also SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) ("Courts have imposed on a fiduciary an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients.").

In breach of that duty, Respondents, with scienter, knowingly deceived their clients by concealing that Michael Sztrom, who clients viewed as their IAR, was not associated with a registered investment adviser and therefore not subject to any compliance. SMF Nos. 17-19, 54-70, 81-87, 116-127, 153. Michael Sztrom's conduct when impersonating David on 38 telephone calls with Schwab in order to access the Schwab platform was knowing, and David's conduct in allowing Michael to deceive Schwab was knowing as well. SMF Nos. 88-100; 116-127. Moreover, after Schwab terminated its custodial and clearing relationship with APA, both Respondents knowingly provided false or misleading information to clients regarding the reason

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they had recommended their clients leave the Schwab platform and move to a new brokerage firm. SMF Nos. 88-115, 116-127. 153.

Finally, David Sztrom knowingly provided substantial assistance to APA's violation of Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2. Specifically, David, while associated with APA, knowingly communicated, and permitted Michael to communicate, via text message on his personal smartphone with the Sztrom clients regarding: (i) recommendations made or proposed to be made and advice given or proposed to be given; (ii) receipt, disbursement or delivery of funds or securities; and/or (iii) the placing or execution of any order to purchase or sell any security, and did not retain these communications. SMF No. 132-152, 154.

Thus, the first three *Steadman* factors weigh in favor of a bar.

b. Respondents have neither recognized the wrongful nature of their conduct, nor provided credible assurances against future violations

To date, Respondents have failed to recognize that they did anything wrong. SMF Nos. 155, 161. By their denials in the district court action and in their answers in this proceeding, Michael Sztrom and David Sztrom have continued to maintain that they did not engage in any wrongdoing and there is no basis to impose any remedial sanctions against them. SMF Nos. 155, 161; Ex. 7 at p. 9.

Respondents' continued arguments that their conduct did not amount to violations of the securities laws demonstrates that they have not meaningfully recognized the wrongful nature of their conduct, and they have not provided any assurances against future misconduct. *See Peter Siris*, S.E.C. Release No. 71068, 2013 WL 6528874, at *7 (Dec. 12, 2013), *pet. for review denied*, *Siris v. SEC*, 773 F.3d 89 (D.C. Cir. 2015); *Jose P. Zollino*, Release No. 2579, 2007 WL 98919, at *6 (Jan. 16, 2007).

c. Likelihood of future violations

Both Respondents continue to work in the securities industry and are providing advisory services to clients. SMF No. 164. Respondents' failure to acknowledge guilt or show remorse

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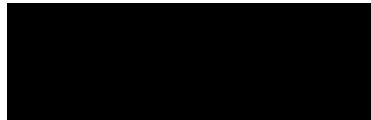
demonstrates there is a significant risk, given the opportunity, that they would commit future misconduct. Absent a bar, Respondents could seek to defraud clients in the future. *See, e.g., Peter Siris*, 2013 WL 6528874, at *7 (remaining in the securities industry "presents continual opportunities for dishonesty and abuse and depends heavily on the integrity of its participants and on investors' confidence."

V. **CONCLUSION**

Based on the undisputed facts, it is in the public interest to bar Respondents from the securities industry. Respondent has been enjoined and there is no genuine issue with regard to any material fact. Respondents' conduct was egregious, recurrent, and involved a high degree of scienter. Respondents have not acknowledged their wrongdoing nor provided assurances against future violations, and their occupations presents opportunities for future violations. Accordingly, the Division's motion for summary disposition should be granted, and Michael and David Sztrom should both be barred from the securities industry.

Dated: September 7, 2023

Respectfully submitted,



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CERTIFICATE OF SERVICE
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the:

MOTION BY DIVISION OF ENFORCEMENT FOR SUMMARY DISPOSITION AGAINST RESPONDENTS MICHAEL SZTROM AND DAVID SZTROM PURSUANT TO COMMISSION RULE OF PRACTICE 250

was served on September 7, 2023 upon the following parties as follows:

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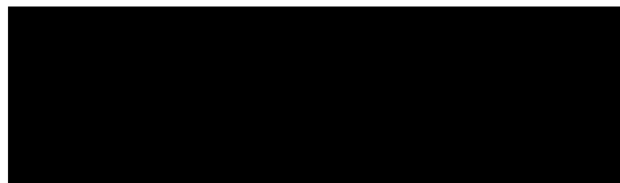
Dated: September 7, 2023



Lynn M. Dean

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21400

In the Matter of **MICHAEL SZTROM and** **DAVID SZTROM,** **Respondents.**

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE IN SUPPORT OF DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

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